

Service Date: November 10, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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INQUIRY INTO MATTERS	)	UTILITY DIVISION
CONCERNING INTERCARRIER	)	
COMPENSATION	)	DOCKET NO. D2004.5.84

**Comments of Montana Independent Telecommunications Systems (MITS)**

**I. General Comments**

On behalf of itself and its members<sup>1</sup>MITS supported the *Comments of the Rural ILECs*, in support of the Missoula Plan in the FCC docket currently addressing this issue.<sup>2</sup> Those comments, which were supported by more than 600 rural telephone companies and statewide telecommunications associations are attached to these comments and incorporated by this reference.

The first item on the list of comments sought by the Montana Public Service Commission (Commission) in its notice seeks general comments about the Missoula Plan. The *Comments of the Rural ILECs* sets forth in four broad categories that which the Missoula Plan is designed to accomplish. MITS concurs and paraphrases those accomplishments as follows:

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<sup>1</sup> MITS' members are: Central Montana Communications, InterBel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Southern Telephone Company, and Triangle Telephone Cooperative Association.

<sup>2</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

1) The Missoula Plan minimizes the rate differences for intercarrier compensation between regulatory jurisdictions and between the types of access services provided. This should greatly reduce the incentive for companies to engage in arbitrage. If the rates are the same or nearly the same, a company no longer has the incentive, for example, to try to make an intrastate interexchange communication look as though it were an interstate interexchange communication.

2) The Missoula Plan establishes a financial mechanism to offset revenues lost by rural telephone companies as intercarrier compensation rates are reduced. Such replacement revenues are absolutely critical to the rural telephone companies' continued ability to deploy and maintain the infrastructure needed not only to provide basic services but also advanced services such as broadband Internet access at a level of quality and price that are reasonably comparable to similar services in urban areas. Moreover, services such as wireless services or services based on IP protocol cannot be delivered without that rural infrastructure.

3) The Missoula Plan takes into account the fact that for a wide variety of reasons some states have already engaged a good deal more in intercarrier compensation reform than others. No state should be penalized by whatever plan is ultimately adopted, either for going forward or for reserving judgment. The Missoula Plan provides mechanisms for dealing with these disparities that treat all states fairly.

4) Finally, the Missoula Plan resolves many critical issues that consume enormous carrier and regulatory resources. For example, the Missoula Plan provides greater certainty as to whether a call is local or non-local in nature. The Plan resolves the issues regarding disparate treatment of intraMTA calls. It deals with the difficult issue of what has been called, quite simply the virtual NXX issue. And it provides rules to resolve the very contentious issue of phantom traffic, whereby carriers seek to force local network providers to terminate their traffic for free by stripping the communication stream of the information needed by the terminating and/or transiting carrier to identify the source of the traffic so it can be properly billed.

MITS has no comments on any plans that were or will be filed with the FCC. MITS and its members have decided after long and intensive deliberations to support the Missoula Plan as currently drafted. As the Plan proceeds through the FCC, changes may be suggested to the Plan, and MITS will consider those suggestions as they arise. Frankly, one of our greatest fears is that the FCC may be persuaded to make changes to the Missoula Plan that may be highly detrimental to the long term interests of Montana's rural telephone companies. Therefore, MITS would add the general comment that we hope the Montana Commission can emphasize in any comments it may choose to make to the FCC that the continued viability of Montana's rural telephone companies is absolutely critical to the ability of rural Montanans to receive affordable, high-quality basic and advanced telecommunications and information technology services.

## II. Specific Comments

While MITS supports the Missoula Plan and the *Comments of the Rural ILECs*, in reading through some of the comments filed by other groups, MITS has found a number of specific comments that are thought-provoking and worthy of consideration in the debate over the merits of the Missoula Plan and the issue of intercarrier compensation in general. For example, a couple of comments by the rural telephone companies in Iowa were worth repeating. The first deals with the fact that the Missoula plan establishes different treatment for different types of carriers. Since MITS has been part of this debate for several years now, we recall some resistance to this idea on the grounds that it was not only time to make rates uniform but to treat all carriers the same. This is what the Iowa rural telephone companies had to say about that issue:

Setting up different tracks for different types of carriers is a good way to acknowledge that different carriers face different situations and address those differences. Our companies serve high-cost areas and generally do not have any lower cost areas within their service territory, unlike RBOCs that serve rural and urban areas. Track Three carriers serve the smallest number of consumers and telephone loops, but some of the largest geographic territory in the country. This Plan, and any Plan ultimately implemented by the Commission, must take into consideration the needs of the consumers in high-cost rural areas.<sup>3</sup>

In addition to the challenge of not having lower-cost areas to offset our higher-cost areas, it is also generally the case that we do not have the kind of ratio of high revenue business customers to lower revenue residential customers that the large and mid-sized carriers have. Rural telephone companies usually serve few if any large

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<sup>3</sup> Comments of the Rural Iowa Independent Telephone Association on the Missoula Intercarrier Compensation Reform Plan

businesses and even the smaller businesses they serve are generally fewer since many rural consumers travel to urban areas to engage in much of their commerce. For these reasons, among others, treating small rural telephone companies on a separate track from larger companies makes a great deal of sense.

Another area of debate concerns the structure of the revenue replacement mechanism to ensure that the decrease in access revenues does not deprive rural telephone companies of their ability to provide comparable services to those available in urban areas at comparable prices. There are certainly powerful arguments in favor of merging the replacement mechanism with the already existing Universal Service Fund. However, the Iowa Association disagrees with this philosophy for reasons that MITS finds at least somewhat compelling:

The Restructure Mechanism is an interim mechanism designed to replace lost access fees, not Universal Service Fund payments. The issues facing Universal Service reform are different than intercarrier compensation. Though there is an impact and interplay between the two issues, the Universal Service issues will be further complicated if the Restructure Mechanism becomes part of Universal Service. It would also complicate the balance between the conflicting goals within the Act of promoting universal service and introducing competition into areas in which the market does not support even one participant without assistance from the Universal Service Fund.<sup>4</sup>

Little question exists regarding the fact that the Universal Service Fund is already under some political pressure that its size be contained due to recent growth. On the other hand, it is not clear that the creation of a new fund is going to be any easier politically than adding additional functions to the existing fund even if the additional functions result in significant further growth in the fund. The most persuasive reason for

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<sup>4</sup> Id.

keeping the funds separate as far as MITS is concerned is, as the Iowa Association notes above, the fact that the issues facing universal service and access are so different that the contributors and recipients to each fund should overlap but not be entirely the same group. There is no reason why a company that is not losing access revenues should participate in a fund designed to replace such revenues, for example.

One of the most daunting tasks facing all of the entities, including MITS that engaged in debate and negotiation regarding intercarrier compensation issues was finding a path that resulted in consensus among the largest possible number of telecommunications companies nationwide. Since there are literally thousands of such companies, absolute consensus was recognized as impossible from the very beginning. Among such a large group, great diversity of opinion is a given and what was acceptable to one group of companies was anathema to another. But MITS was pleased with the description of one group about the development of the Missoula plan in this environment:

[The Missoula Plan] reflects an extraordinary effort by a diverse group of industry participants and presents viable solutions to address the complex issues facing the telecommunications industry today.<sup>5</sup>

The effort truly was extraordinary. Large groups of companies developed separate plans and then came together to try to integrate the best features of those plans into something that really did establish a structure that could work. In the incredibly litigious environment that has followed the passage of the Telecommunications Act of 1996; the fact that negotiations continued over the course of several years and actually resulted in the filing of a document is nothing short of amazing. The Plan is not perfect. Certainly not all companies or industry segments concur. But the fact that a plan is under

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<sup>5</sup> Oklahoma Rural Telecommunications Coalition Comments, page 3.

review is a testament to the enormous importance of the underlying issues to many, many companies and their customers.

Among the most contentious disagreements in the telecommunications industry over the past five years have been those between landline and wireless telecommunications companies. As another commenter noted, the Missoula Plan is especially to be commended for addressing some of the most difficult and long-standing issues between these industry segments.

Under the Plan, for calls that originate on a LEC network, the intraMTA rule is modified as the basis for determining which compensation regime is to be applied to the call. The telephone-numbers rule is invoked and the telephone numbers of the calling and the called subscribers are used as the basis for determining the compensation regime that will be applied to the call. Therefore, the location of the wireless subscriber when the call was originated will no longer need to be identified. Under the telephone-numbers rule, when the numbers of the calling and called parties are associated with the same rate center, reciprocal compensation applies. When the numbers of the calling and called parties are not associated with the same rate center, access charges apply. This compromise works to address several problems that have arisen as a result of the intraMTA rule.

First, LECs generally do not have knowledge of the location of the wireless subscriber when the call is originated. Therefore, often the correct compensation regime is unknown for any particular call. Under the intraMTA rule, LECs must conduct traffic studies to determine the location of the wireless subscriber when a call was originated. These studies determine the ratio of intraMTA to interMTA minutes and the quantity of minutes to bill under the proper compensation regime. With the elimination of the intraMTA rule and adoption of the telephone numbers rule the location of the wireless subscriber, when a call is originated, will no longer need to be determined and thus will eliminate the need to perform traffic studies for this purpose, saving time and money

associated with conducting and defending the results of the studies.

Second, replacing the intraMTA rule with the telephone-numbers rule will properly align LECs' dialing parity requirements and end-user billing with the appropriate compensation regime. Under the new rule, telecommunications traffic that is subject to reciprocal compensation will be treated as a local call for dialing parity purposes and end user billing. Telecommunications traffic that is not subject to reciprocal compensation would be treated as a toll call for toll dialing parity purposes and will be routed to an interexchange carrier. Instead of the disputes that occur under the intraMTA rule as often promoted by the wireless industry, the telephone-numbers rule will provide consistent treatment of all LEC originated traffic for intercarrier compensation purposes.

Eliminating the intraMTA rule and replacing it with the telephone-numbers-based approach will eliminate many intercarrier disputes and will allow carriers to concentrate on the operations of their business instead of tending to disputes.<sup>6</sup>

Therefore, the Missoula Plan usefully establishes the type of compensation to be paid as well as establishing dialing parity obligations. As noted, the time, energy and money that would undoubtedly have been put into litigation of these issues going forward could now be used as it should be used: in the operations of the companies for the benefit of their consumers and their shareholders or members.

### **III. Universal Service Funding and Mechanisms for Rural and Non-Rural Carriers**

As noted above, MITS primary concern in this regard is what structure of universal service funding and access replacement is least likely to cause political problems at the FCC and in Congress. There are advantages and disadvantages to joining

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<sup>6</sup>Comments of the South Dakota Telecommunications Association



the funding mechanisms as well as to keeping them separate. A key question is whether the bureaucracy that currently manages the universal service fund can take on the access replacement mechanism in a manner that is more efficient than creating a separate bureaucracy for the access fund – even when the contributors and recipients of the two funds overlap but are not identical groups of companies.

#### **IV. Recommendations**

MITTS urges the Commission to support the Missoula Plan as drafted. If there are aspects of the Missoula Plan that are unacceptable to the Commission, MITTS urges the Commission to identify those with specificity and support the remainder of the Plan. Most importantly, MITTS reminds the Commission that Montana is, at its essence, a rural state. Montana therefore stands far more to lose than many other states if an adequate revenue replacement mechanism is not established as part of whatever plan is ultimately adopted. If Montana's rural telephone companies were to simply lose the revenues currently associated with access fees and reciprocal compensation, enormous upward pressure would be placed on the local telephone rates in Montana's rural areas (which comprise well over 80% of the land area of the state). If the State of Montana were to try to step in and provide the necessary revenues, the politics would be untenable since we would be talking about tens of millions of dollars in new taxes. We simply do not have the population base to spread the costs to urban users of telecommunications. MITTS fight and negotiate to the best of its abilities alongside other rural telephone company representatives so we can continue to provide affordable basic and advanced telecommunications services. We simply ask the Commission to join us to the greatest

degree possible in seeking the passage of a Plan by the FCC that gives us the best possible opportunity to achieve this result.

RESPECTFULLY SUBMITTED This 10<sup>th</sup> day of November, 2006

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Michael Strand  
CEO & General Counsel  
MITS